

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1182 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

B.G. SHIRKE & CO.

Versus

CEMENT CORPORATION OF GUJARAT LTD.

Appearance:

Ms.S.G. Gandhi for MR SS BELSARE for Petitioner
MR AJ SHASTRI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. The present Revision Application has been filed by the original defendant of Special Civil Suit No.44 of 1992, which was filed by the respondent-Cement Corporation of Gujarat Ltd. The aforesaid suit was filed by the respondent-Corporation for recovery of Rs.2,17,830.54Ps. for supply of cement material to the defendant as well as for interest for non-payment of the principal amount. In the said suit, since the defendant

did not appear, an ex parte decree was passed on 1st October, 1992. The defendant thereafter filed an application under Order IX Rule 13 of CPC for setting aside the ex parte decree. Since there was a delay in preferring the said application, being Civil Miscellaneous Application No.42 of 1993, application for condonation of delay, i.e Application at Exhibit 1, was made.

2. The learned Civil Judge (S.D.) Veraval, by his order dated 14th June, 1996, rejected the said Application at Exhibit 1 given in Civil Miscellaneous Application No.42 of 1993, i.e. for condonation of delay. The said order is challenged by the original defendant in the present Revision Application.

3. This Court, by order dated 3rd August, 1996, directed the present petitioner to deposit Rs.1,17,830.54Ps. in the trial court. The petitioner has deposited the said amount and in view of the same, the matter was admitted and interim relief was also granted. This Court (Coram : M.H. Kadri, J.) by order dated 24th September, 1996, permitted the plaintiff-Cement Corporation of Gujarat to withdraw the said amount either by furnishing bank guarantee or security to the satisfaction of the trial court.

4. At the time of hearing of this Revision Application, Ms. S.G. Gandhi for the petitioner submitted that the defendant was not served with the summons of the case and that since the defendant was not aware about the decree, the moment they came to know about the same, an application under Order IX Rule 13 CPC for setting aside ex parte decree was filed and prayed that in the facts and circumstances of the case, the trial court should have condoned the delay and should have decided the aforesaid application on its own merits. It is submitted that the Court has failed to consider the principles regarding condonation of delay and that has resulted in miscarriage of justice and that the trial court has failed to exercise the jurisdiction vested in it under law.

5. I have heard the arguments of both the learned Advocates.

On behalf of the original defendant, it was stated that the concerned Officer was on leave from 15.9.1993 to 3.12.1993 because of illness and that, therefore, delay in preferring the application should be condoned. The learned trial Judge has found that no medical certificate to this effect was produced. It is

not in dispute that the defendant was managing its affairs through its Law Officers and simply because the medical certificate is not produced, it cannot be presumed that the ground stated in the application for condonation of delay is false. There are series of decisions regarding the principles which are to be considered while condoning delay. This Court in Asian Steel & Metals (P) Ltd. v. Pari Maganlal Hiralal & Anr., 18 GLR 606 has laid down certain principles for considering the application for condonation of delay. In view of the aforesaid judgment, the Court has to take a liberal view while considering the question of condonation of delay. It is not the case where the defendant wanted to give up the cause and at least, the defendant should not be allowed to lose the battle before facing the same in the Court. The defendant has given at least some plausible ground for not preferring an application under Order IX Rule 13 within the stipulated time. This Court to a certain extent has protected the interest of the plaintiff by directing the defendant to deposit Rs.1,17,830.54 Ps. and the plaintiff was also allowed to withdraw the said amount. The plaintiff is a Corporation of the State Government and naturally, it cannot have any objection if ultimately the defendant is allowed to contest the claim of the plaintiff on merits. Mr. Shastri for the plaintiff also could not point out anything contrary in so far as the principles for condonation of delay is concerned. Since the defendant has already deposited considerable amount which the plaintiff is allowed to withdraw, I deem it fit to condone the delay which has occurred on the part of the defendant in filing the application under Order IX Rule 13 CPC.

6. The aforesaid application, i.e. Application Exhibit 1, in Civil Miscellaneous Application No.42 of 1993 given before the Civil Judge (S.D.), Veraval is granted accordingly. The delay in preferring the application for setting aside the ex parte decree, i.e. C.M.A. No.42 of 1993 is condoned. The effect would be that the trial court will decide the application for setting aside the ex parte decree under Order IX Rule 13 on its own merits. While deciding the same, the trial court may also consider the law declared by this Court and the Honourable Supreme Court regarding the principles for deciding applications under Order IX Rule 13, CPC. However, I am not expressing anything on merits about the application under Order IX Rule 13, CPC and the same may be decided by the trial court in accordance with law. It is clarified that if ultimately the application under Order IX Rule 13 is allowed and if ultimately, the suit

is ordered to be proceeded on merits, the aforesaid amount, which the plaintiff has withdrawn, will be subject to the outcome of the said proceedings or outcome of the suit, as the case may be. However, my aforesaid observations need not be treated as any observations on merits so far as the application under Order IX Rule 13 CPC is concerned and the same, as stated earlier, is to be decided on its own merits.

7. Subject to what is stated above, the revision application is allowed. The order dated 14th June, 1996 passed below Application Exhibit 1 in Civil Miscellaneous Application No.42 of 1993 is quashed and set aside. The delay in preferring the aforesaid application, i.e. Civil Miscellaneous Application No.42 of 1993 is condoned. Rule is accordingly made absolute. However, the petitioner to pay costs of Rs.1,000/- to the respondent in so far as the costs of this Revision Application is concerned. The amount of costs to be deposited in the trial court and on deposit of the same, the respondent will be entitled to withdraw the same.

28th July, 2000 (P.B. Majmudar, J.)

(apj)